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**BY MESSENGER AND EMAIL: DRAWLS@FEC.GOV**

Federal Election Commission  
Office of Complaints Examination and Legal Administration  
attn: Donna Rawls, Paralegal  
999 E Street, NW  
Washington, DC 20436

**Re: MUR 7024**  
**Van Hollen for Senate and Stacey Maud, in her official capacity as treasurer**  
**Van Hollen for Congress and Stacey Maud, in her official capacity as treasurer**

Dear Ms. Rawls:

I write as counsel to Van Hollen for Senate, Van Hollen for Congress and Stacey Maud, in her official capacity as treasurer, in response to the complaint in MUR 7024. The Complaint presents no reason to believe that any respondent violated the Federal Election Campaign Act of 1971, as amended ("the Act"): The Commission should accordingly dismiss it and take no further action.

Since the enactment of the Act, federal officeholders and candidates have received pro bono legal services to challenge, defend and shape the provisions of the Act and its implementing regulations, with no suggestion or finding that these candidates were thereby violating the Act. In *Buckley v. Valeo*, the plaintiffs who challenged the 1974 amendments to the Act included officeholders, candidates and a principal campaign committee. See *Buckley v. Valeo*, 519 F.2d 821, 834 n.1 (1975). "They were represented pro bono by lawyers of similarly divergent political viewpoints ..." Ralph K. Winter, *The History and Theory of Buckley v. Valeo*, 6 J.L. & Pol'y 93 (1997). According to one first-hand account: "*Buckley* became the largest pro bono matter Covington [& Burling] had undertaken in its history to that point ..." John Bolton, *40 Years of Campaign Finance Decisions at the Supreme Court*, The Algemeiner (Jan. 29, 2016), available at, <http://www.algemeiner.com/2016/01/29/40-years-of-campaign-finance-decisions-at-the-supreme-court/#>.

Likewise, when the Senate passed the Bipartisan Campaign Reform Act of 2002, it simultaneously adopted a resolution that permitted its Members to accept pro bono legal services in any civil action challenging its constitutionality. See S. Res. 227, 107th Cong. (2002). Thus, through four separate law firms, U.S. Senator Mitch McConnell filed a complaint in federal district court, alleging that he would be injured by the law in his capacity as a "candidate." See

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Complaint for Declaratory and Injunctive Relief ¶ 16, *McConnell v. FEC*, Civ. No. 02-582 (D.D.C. filed Mar. 27, 2002), *available at*, <http://campaignfinance.law.stanford.edu/wp-content/uploads/2012/09/mcconnell.3.27.2002.pdf>. In news accounts, the Senator affirmed that he was receiving these services pro bono. *See* Nick Anderson, *Starr Will Help Fight Finance Reform*, L.A. Times, Mar. 22, 2002, *available at*, <http://articles.latimes.com/2002/mar/22/news/mn-34161>. By passing the 2002 resolution, the Senate evidenced a clear understanding that the acceptance of pro bono legal services to challenge campaign finance laws would not result in a contribution under FECA.

The Commission's history contains multiple, similar instances of federal candidates receiving or at least appearing to receive pro bono legal services to shape, limit or expand the scope of campaign finance regulation under the Act. *See, e.g.*, Motion Of Sen. Mitch McConnell For Leave To Participate In Oral Argument As Amicus Curiae And For Divided Oral Argument at 2, *McCutcheon v. FEC*, No. 12-536 (U.S. filed July 25, 2013); Complaint ¶ 8, *Cao v. FEC*, No. 08-4887 (E.D. La. filed Nov. 13, 2008); *Shays v. FEC*, 528 F.3d 914 (D.C. Cir. 2008); *Shays v. FEC*, 424 F. Supp. 100 (D.D.C. 2006); *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005); *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004).

Representative Van Hollen is simply among the latest in the long line of candidates and officeholders to participate in pro bono litigation over the campaign finance laws. As the Complaint alleges, he sued the Commission to challenge a regulation governing the disclosure of electioneering communications. *See* Compl. ¶¶ 18-22. Relatedly, he filed a petition for rulemaking to change Commission regulations on the disclosure of independent expenditures. *See* Compl. ¶¶ 18, 20. Like the plaintiffs in *Buckley*, *McConnell* and other cases, he acted in his capacity as a federal candidate because the legal framework would affect his election. Yet, like those plaintiffs, as a sitting Member of Congress he was also motivated by strong intellectual and philosophical beliefs regarding policy in the field of campaign finance. The Complaint acknowledges as much. From the very beginning, it identifies him as "the leading force in the U.S. House of Representatives for campaign finance reform ..." Compl. ¶ 3 n.1. Representative Van Hollen made no secret that he was accepting representation from the other named respondents in this matter, and he has appropriately received that representation under the Rules of the United States House of Representatives.<sup>1</sup>

More than twenty pages long, and supplemented by fifteen exhibits, the Complaint ultimately rests on a lone, tentative assertion: that "the direct supply of *pro bono* legal services to a third party who provides legal services to a candidate or political committee *may* constitute a contribution that must be disclosed and valued at the usual and normal charge for such services." Compl. ¶ 23 (emphasis added). For this proposition, it cites the general definition of

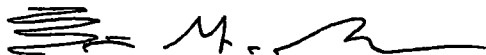
<sup>1</sup> The Complaint's erroneous discussion of House Rules—*see* Compl. ¶ 23—is beyond the scope of the Commission's jurisdiction in this matter. *See* 52 U.S.C. § 30109(a).

“contribution” from the Federal Election Campaign Act of 1971, as amended, and Commission regulations. *See id.* ¶¶ 23-24. The Complaint contends that the provision of pro bono legal services to a candidate or political committee is a contribution unless expressly exempted. *See id.* ¶¶ 23-24.

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However, this is not how the Commission has analyzed the treatment of litigation expenses. It has consistently distinguished suits like those in *Buckley*, *McConnell* and *Van Hollen*—which, while obviously related to elections, do not seek to influence any particular result—from those suits which actually constitute election-influencing activity. In redistricting, the Commission has repeatedly found that while the “the outcome of redistricting litigation often has political consequences ... spending on such activity is sufficiently removed that it is not ‘in connection with’ the elections themselves.” Advisory Opinion 2010-03. Likewise, in the case of legal defense, the Commission has repeatedly found that “donations and disbursements made for the purpose of defending oneself in a lawsuit [are] not ‘contributions’ or ‘expenditures’ ...” Advisory Opinion 1981-16. *Accord* Advisory Opinion 2003-15. Finally, in the case of ballot qualification, the Commission has distinguished the overturning of party rules to secure ballot access, which is “not attempting to influence a Federal election,” from the attempted removal of an identified opponent from the ballot, which “was for the purpose of influencing a Federal election since the object of the requestor’s lawsuit was to eliminate the electorate’s opportunity to cast a vote for his opponent.” Advisory Opinion 1982-35.

The expenses in the *Van Hollen* litigation are no different than those accepted in *Buckley* and *McConnell*, and those which the Commission has permitted in the cases of redistricting, legal defense and ballot access. In each of these cases, the litigation was related in some way to elections. However, in none was the litigation seeking to affect a particular election result. Certainly this was the case with Representative Van Hollen. The suit provided no direct, tangible benefit to his campaign, just as the *McConnell* suit provided none to Senator McConnell’s. While the fact of his candidacy was relevant to the wholly separate question of establishing standing in the case, it was “sufficiently removed” from any potential outcome of his election so as not to be in connection with the election itself. Advisory Opinion 2010-03. The Commission should accordingly find no reason to believe Representative Van Hollen’s campaigns violated the Act, dismiss the complaint, and close the file:

Very truly yours,



Brian G. Svoboda  
Counsel to Van Hollen for Senate, Van Hollen for Congress, and Stacey Maud, in her official capacity as treasurer